



A CONTRACT BETWEEN THE CITY OF NASHUA
AND

NAME AND TITLE OF INDEPENDENT CONTRACTOR

ADDRESS OF INDEPENDENT CONTRACTOR

WHEREAS, the City of Nashua, a political subdivision of the State of New Hampshire, from time to time requires the services of independent Contractor; and

WHEREAS, it is deemed that the services of Contractor herein specified are both necessary and desirable and in the best interests of the City of Nashua; and

WHEREAS, Contractor represents they are duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

1. DOCUMENTS INCORPORATED. The following exhibits are by this reference incorporated herein and are made part of this contract:

Exhibit A - General Conditions for Contracts

Exhibit B - Scope of Services

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, proposals, representations or agreements, either written or oral. Any other documents which are not listed in this Article are not part of the Contract.

2. WORK TO BE PERFORMED. Except as otherwise provided in this contract, Contractor shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform in accordance with the terms and conditions of the contract the work described in Exhibit B.

3. PERIOD OF PERFORMANCE. Contractor shall perform and complete all work within the time periods set forth in Exhibit B. The time periods set forth in Exhibit B may only be altered by the parties by a written agreement to extend the period of performance or by termination in accordance with the terms of the contract. Contractor shall begin performance upon receipt of a Notice to Proceed and a valid purchase order from the City.

4. COMPENSATION. Contractor agrees to perform the work for a total cost not to exceed \$_____, which, unless otherwise provided in this contract, shall be paid in accordance with the provisions of Exhibit B. Requests for payment must include a detailed summary of the expenditures reported in a form that supports the approved budget. Specifically, contractor agrees to provide the following with each request for payment:

1. Appropriate invoice forms. The forms shall include the project purchase order number, a listing of personnel hours and billing rates, and other expenditures for which payment is sought.
2. A progress report. The report shall include a description of the work accomplished, problems experienced, upcoming work, any extra work carried out, and a schedule showing actual expenditures billed for the period, cumulative total expenditures billed and paid to date under the contract, and a comparison of cumulative total expenditures billed and paid to the approved budget.

The City will pay for work satisfactorily completed by Contractor. The City will pay Contractor within 30 days of approval by the City of the submitted invoice forms and progress reports. The City will make no payments until the invoice forms and progress reports have been submitted and approved. The parties expressly agree that progress payments shall not exceed the amounts for any particular task or phase of work set forth in Exhibit B and may be made in accordance with General Condition paragraph 14.

5. EFFECTIVE DATE OF CONTRACT. This contract shall not become effective until and unless approved by the City of Nashua.

6. NOTICES. All notices, requests, or approvals required or permitted to be given under this contract shall be in writing, shall be sent by hand delivery, overnight carrier, or by United States mail, postage prepaid, and registered or certified, and shall be addressed to:

CITY REPRESENTATIVE:
Carrie Schena, Urban Programs Manager
City of Nashua, Community Development Division
229 Main Street
Nashua, NH 03060

CONTRACTOR REPRESENTATIVE:

Any notice required or permitted under this contract, if sent by United States mail, shall be deemed to be given to and received by the addressee thereof on the third business day after being deposited in the mail. The City or Contractor may change the address or representative by giving written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

Independent Contractor (date)

Mayor, City of Nashua (date)

EXHIBIT A
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GENERAL CONDITIONS

1. **DEFINITIONS.** Unless otherwise required by the context, "Contractor" includes any of the Contractor's consultants, subconsultants, contractors, and subcontractors
2. **INDEPENDENT CONTRACTORS STATUS AND PROVISION OF WORKERS' COMPENSATION COVERAGE.** The parties agree that Contractor shall have the status of and shall perform all work under this contract as an independent contractor, maintaining control over all its consultants, subconsultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the City and Contractor, and nothing in this contract shall create any contractual relationship between the City and Contractor's consultants, subconsultants, contractors, or subcontractors. The parties also agree that Contractor is not a City employee and that there shall be no:
 - (1) Withholding of income taxes by the City;
 - (2) Industrial insurance coverage provided by the City;
 - (3) Participation in group insurance plans which may be available to employees of the City;
 - (4) Participation or contributions by either the independent contractor or the City to the public employee's retirement system;
 - (5) Accumulation of vacation leave or sick leave provided by the City;
 - (6) Unemployment compensation coverage provided by the City.

Contractor agrees, if not exempt, to maintain required workers' compensation coverage throughout the entire term of the contract. If Contractor does not maintain coverage throughout the entire term of the contract, Contractor agrees that City may, at any time the coverage is not maintained by Contractor, order the Contractor to stop work, suspend the contract, or terminate the contract. For each six-month period this contract is in effect, Contractor agrees, prior to the expiration of the six-month period, to provide another written request to its insurer for the provision of a certificate and notice of lapse in or nonpayment of coverage. If Contractor does not make the request or does not provide the certificate before the expiration of the six-month period, Contractor agrees that City may order the Contractor to stop work, suspend the contract, or terminate the contract.

3. **STANDARD OF CARE.** Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Contractor warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Contractor to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City may have, Contractor shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Contractor's failure to perform in accordance with this standard of care. Any approval by the City of any products or services furnished or used by Contractor shall not in any way relieve Contractor of the responsibility for professional and technical accuracy and adequacy of its work. City review, approval, or acceptance of, or payment for any of Contractor's work under this contract shall not operate as a waiver of any of the City's rights or causes of action under this contract, and Contractor shall be and remain liable in accordance with the terms of the contract and applicable law.

Contractor shall furnish competent and skilled personnel to perform the work under this contract. The City reserves the right to approve key personnel assigned by Contractor to perform work under this contract. Approved key personnel shall not be taken off of the project by Contractor without the prior written approval of the City, except in the event of termination of employment. Contractor shall, if requested to do so by the City, remove from the job any personnel whom the City determines to be incompetent, dishonest, or uncooperative.

4. **CITY REPRESENTATIVE.** The City may designate a City representative for this contract. If designated, all notices, project materials, requests by Contractor, invoice forms, and progress reports, and any other communication about the contract shall be addressed or be delivered to the City Representative.

- 5. CHANGES TO SCOPE OF WORK.** The City may, at any time, by written order, make changes to the general scope, character, or cost of this contract and in the services or work to be performed, either increasing or decreasing the scope, character, or cost of Contractor's performance under the contract. Contractor shall provide to the City within 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City to be able to adequately analyze the proposal. The City will then determine in writing if Contractor should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Contractor's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Contractor for adjustment under this clause shall be asserted in writing within 30 days of the date the City notified Contractor of the change.

When Contractor seeks changes, Contractor shall, before any work commences, estimate their effect on the cost of the contract and on its schedule and notify the City in writing of the estimate. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City to be able to adequately analyze the proposal. The City will then determine in writing if Contractor should proceed with any or all of the proposed change.

Except as provided in this paragraph, Contractor shall implement no change unless the City in writing approves the change. Unless otherwise agreed to in writing, the provisions of this contract shall apply to all changes. The City may provide verbal approval of a change when the City, in its sole discretion, determines that time is critical or public health and safety are of concern. Any verbal approval shall be confirmed in writing as soon as practicable. Any change undertaken without prior City approval shall not be compensated and is, at the City's election, sufficient reason for contract termination.

- 6. CITY COOPERATION.** The City agrees that its personnel will cooperate with Contractor in the performance of its work under this contract and that such personnel will be available to Contractor for consultation at reasonable times and after being given sufficient advance notice that will prevent conflict with their other responsibilities. The City also agrees to provide Contractor with access to City records in a reasonable time and manner and to schedule items that require action by the Finance Committee in a timely manner. The City and Contractor also agree to attend all meetings called by the City or Contractor to discuss the work under the Contract, and that Contractor may elect to conduct and record such meetings and shall later distribute prepared minutes of the meeting to the City.
- 7. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES.** Contractor warrants that it has examined all contract documents, has brought all conflicts, errors, discrepancies, and ambiguities to the attention of the City in writing, and has concluded that the City's resolution of each matter is satisfactory to Contractor. All future questions Contractor may have concerning interpretation or clarification of this contract shall be submitted in writing to the City within 10 calendar days of their arising. The writing shall state clearly and in full detail the basis for Contractor's question or position. The City representative shall render a decision within 15 calendar days. The City's decision on the matter is final. Any work affected by a conflict, error, omission, or discrepancy which has been performed by Contractor prior to having received the City's resolution shall be at Contractor's risk and expense. At all times, Contractor shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination of the City. Contractor is responsible for requesting clarification or interpretation and is solely liable for any cost or expense arising from its failure to do so.

8. TERMINATION OF CONTRACT

- A. TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL.** In accordance with 24 CFR 85.44, the City, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the City chooses to terminate, abandon, or suspend all or part of the project, it shall provide Contractor 10 day's written notice of its intent to do so.

If all or part of the project is suspended for more than 90 days, the suspension shall be treated as a termination at will of all or part of the project and contract.

Upon receipt of notice of termination, abandonment, or suspension at will, Contractor shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
3. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of all orders or subcontracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the City any orders or subcontracts specified in the notice, and revoke agreements specified in the notice.
4. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the City to resume performance.

In the event of a termination, abandonment, or suspension at will, Contractor shall receive all amounts due and not previously paid to Contractor for work satisfactorily completed in accordance with the contract prior to the date of the notice and compensation for work thereafter completed as specified in the notice. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work.

- B. TERMINATION FOR CAUSE.** This agreement may be terminated by the City on 10 calendar day's written notice to Contractor in the event of a failure by Contractor to adhere to all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City, pursue the project or to complete work in a timely and professional manner. Contractor shall be given an opportunity for consultation with the City prior to the effective date of the termination. Contractor may terminate the contract on 10 calendar days written notice if, through no fault of Contractor, the City fails to pay Contractor for 30 days after the date of approval of any submitted invoice forms and progress reports.

In the event of a termination for cause, Contractor shall receive all amounts due and not previously paid to Contractor for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the City by reasons of Contractor's failure. Contractor shall not be relieved of liability to the City for damages sustained from the failure, and the City may withhold any payment to the Contractor until such time as the exact amount of damages due to the City is determined. All claims for payment by the Contractor must be submitted to the City within 30 days of the effective date of the notice of termination.

If after termination for the failure of Contractor to adhere to all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City, pursue the project or to complete work in a timely and professional manner, it is determined that Contractor had not so failed, the termination shall be deemed to have been a termination at will. In that event, the City shall make an equitable adjustment in the compensation paid to Contractor. The adjustment shall include a reasonable profit for services or other work performed up to the effective date of termination less all previous payments.

- C. GENERAL PROVISIONS FOR TERMINATION.** Upon termination of the contract, the City may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Contractor shall cease conducting business, the City shall have the right to solicit applications for employment from any employee of the Contractor assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Contractor's principals, officers, employees, agents, subContractors, consultants, vendors, or suppliers are expressly recognized to be within Contractor's control.

- 9. DISPUTE RESOLUTION.** Any dispute not within the scope of section 7 and section 9 shall be resolved under this paragraph. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City Representative and a Contractor representative. At all times, Contractor shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City. If the dispute is not resolved within 30 days, either party may request that the dispute be submitted to the Community Development Division Director for final resolution. The decision of the Community Development Division Director shall be final and binding on the parties. If either party is dissatisfied with the decision of the Community Development Division Director, that party may immediately terminate the contract under this paragraph, with Contractor being entitled to compensation for work actually and satisfactorily performed up to the time of the termination and the City being entitled to all contract materials in accordance with paragraph 21, and compensation for any additional damages or expenses incurred in completing the work under the contract, including, without limitation, the costs of securing the services of other independent Contractors.
- 10. NO DAMAGES FOR DELAY.** Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Contractor for damages because of hindrances or delays in the progress of the work from any cause, and Contractor agrees to accept in full satisfaction of such hindrances and delays any extension of time that the City may provide.
- 11. INSURANCE.** Contractor shall carry and maintain in effect during the performance of services under this contract:
- General Liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate
 - Automobile Liability: \$1,000,000 Combined single limit
 - Workers' Compensation as required by statute/Employer's Liability of \$100,000/\$500,000/\$1,000,000
 - Professional Liability \$1,000,000, including occurrence based errors and omissions covering lead inspection and consulting activities

Contractor shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by **Contractor** are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by **Contractor** under this contract. The City of Nashua shall not maintain any insurance on behalf of **Contractor**. SubContractors are subject to the same insurance requirements as **Contractor** and it shall be the **Contractor's** responsibility to ensure compliance of this requirement.

Contractor will provide the City of Nashua with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten calendar days after the City issues the notice of award. The City of Nashua requires thirty days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. General Liability,

Employers' Liability and Auto Liability policies must name the **City of Nashua as an additional insured** and reflect on the certificate of insurance. **Contractor** is responsible for filing updated certificates of insurance with the City of Nashua's Risk Management Department during the life of the contract.

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, **Contractor** must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve **Contractor** of its responsibilities or limit the amount of its liability to the City or other persons, and **Contractor** is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the City of Nashua shall be called upon to contribute to a loss.
- **Contractor** is responsible for and required to remedy all damage or loss to any property, including property of the City, caused in whole or part by **Contractor** or anyone employed, directed, or supervised by **Contractor**.

12. INDEMNIFICATION. Regardless of the coverage provided by any insurance, Contractor agrees to indemnify and shall defend and hold harmless the City, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Contractor or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Contractor's indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

13. FISCAL CONTINGENCY. All payments under this contract are contingent upon the availability to the City of the necessary funds. This contract shall terminate and the City's obligations under it shall be extinguished at the end of any fiscal year in which the City fails to appropriate monies for the ensuing fiscal year sufficient for the performance of this contract.

Nothing in this contract shall be construed to provide Contractor with a right of payment over any other entity. Any funds obligated by the City under this contract that are not paid to Contractor shall automatically revert to the City's discretionary control upon the completion, termination, or cancellation of the agreement. The City shall not have any obligation to re-award or to provide, in any manner, the unexpended funds to Contractor. Contractor shall have no claim of any sort to the unexpended funds.

14. COMPENSATION. Review by the City of Contractor's invoice forms and progress reports for payment will be promptly accomplished by the City. If there is insufficient information, the City may require Contractor to submit additional information. Unless the City, in its sole discretion, decides otherwise, the City shall pay Contractor in full within 30 days of approval of the submitted invoice forms and progress reports.

15. COMPLIANCE WITH APPLICABLE LAWS. Contractor, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans With Disabilities Act. Contractor shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

A. The Contractor agrees to comply with its responsibilities under the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulation concerning Community Development Block Grants {CDBG}) including subpart K of these regulations, except that (1) the Contractor does not assume the Grantee's environmental responsibilities described in 24 CFR 570.604 and (2) the Contractor does not assume the Grantee's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Contractor also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Contract.

16. NONDISCRIMINATION. Contractor will not discriminate against any employee or applicant for employment because physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to take affirmative action to employ, advance in employment, or to otherwise treat qualified, handicapped individuals without discrimination based upon physical or mental handicap in all employment practices, including but not limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

Without limitation of the foregoing, Contractor's attention is directed to 41 C.F.R. § 60-1.4, and the clause entitled "Equal Opportunity Clause" which, by reference, is incorporated into this contract, to 41 C.F.R. § 60-250 et seq. and the clause entitled "Affirmative Action Obligations of Contractors and Subcontractor for Disabled Veterans and Veterans of the Vietnam Era," which, by reference, is incorporated in this contract, and to 41 C.F.R. § 60-471 and the clause entitled "Affirmative Action Obligations of Contractors and Subcontractors for Handicapped Workers," which, by this reference, is incorporated in this contract.

Contractor agrees to assist disadvantaged business enterprises in obtaining business opportunities by identifying and encouraging disadvantaged suppliers, consultants, and subconsultants to participate to the extent possible, consistent with their qualification, quality of work, and obligation of Contractor under this contract.

In connection with the performance of work under this contract, Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, or sexual orientation. This agreement includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Contractor agrees, if applicable, to insert these provisions in all subcontracts, except for subcontracts for standard commercial supplies or raw materials. Any violation of any applicable provision by Contractor shall constitute a material breach of the contract.

The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of the Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Contractor's non-compliance with the nondiscrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended

in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Contractor will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States."

EEO/AA Statement - The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that it is an Equal Opportunity or Affirmative Action employer.

17. FEDERAL SUBCONTRACTING REQUIREMENTS. If Contractor awards a subcontract under this contract, Contractor, if applicable, shall use the following alternative steps:

A. Using the services of the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce, as appropriate; and if applicable, Contractor agrees to complete and submit to the City a Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) Utilization Report (Standard Form 334) within 30 days after the end of each fiscal quarter until the end of the contract.

18. CONTRACTOR ENDORSEMENT. Contractor shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Contractor or under its direction as required under the laws of the State of New Hampshire.

19. ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING. Contractor shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City is void. Any consent of the City to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.

20. CITY INSPECTION & MAINTENANCE OF CONTRACT MATERIALS. The Contractor must maintain all required records for five years after final payments are made and all other pending matters are closed. The books, records, documents and accounting procedures and practices of Contractor related to this contract shall be subject to inspection, examination and audit, at any time during normal business hours and as frequently as is deemed necessary, by the City, including, but not limited to, the contracting agency, Corporation Counsel, General Accounting Office, the Department of Housing and Urban Development and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

21. DISPOSITION OF CONTRACT MATERIALS. Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Contractor in the performance of its obligations under this contract shall be the exclusive property of the City and all such materials shall be remitted and delivered, at Contractor's expense, by Contractor to the City upon completion, termination, or cancellation of this contract. Alternatively, if the City provides its written approval to Contractor, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic,

magnetic, digital) prepared by or supplied to Contractor in the performance of its obligations under this contract must be retained by Contractor for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the City, in writing, requests any or all of the materials, then Contractor shall promptly remit and deliver the materials, at Contractor's expense, to the City. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Contractor's obligations under this contract without the prior written consent of the City.

- 22. PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS.** Contractor expressly agrees that all documents ever submitted, filed, or deposited with the City by Contractor (including those remitted to the City by Contractor pursuant to paragraph 21), unless designated as confidential by a specific statute of the State of New Hampshire, shall be treated as public records and shall be available for inspection and copying by any person, or any governmental entity.

No books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Contractor in the performance of its obligations under this contract shall be the subject of any application for a copyright or patent by or on behalf of Contractor. The City shall have the right to reproduce any such materials.

Contractor expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the City or any of its officers or employees, in either their official or individual capacity, for violations of or infringement of the copyright or patent laws of the United States or of any other nation. Contractor agrees to indemnify, to defend, and to hold harmless the City, its representatives, and employees from any claim or action seeking to impose liability, costs, and attorney fees incurred as a result of or in connection with any claim, whether rightful or otherwise, that any material prepared by or supplied to Contractor infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Contractor infringes any patent.

Contractor shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided that such substituted or modified materials, concepts, products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.

- 23. FINAL ACCEPTANCE.** Upon completion of all work under the contract, Contractor shall notify the City in writing of the date of the completion of the work and request confirmation of the completion from the City. Upon receipt of the notice, the City shall confirm to Contractor in writing that the whole of the work was completed on the date indicated in the notice or provide Contractor with a written list of work not completed. With respect to work listed by the City as incomplete, Contractor shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City shall be the date upon which the Community Development Division Director or other designated official accepts and approves the notice of completion.

- 24. TAXES.** Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Contractor hereby indemnifies and holds harmless the City from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

- 25. NON-WAIVER OF TERMS AND CONDITIONS.** None of the terms and conditions of this contract shall be considered waived by the City. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City in a written waiver.

26. RIGHTS AND REMEDIES. The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

27. PROHIBITED INTERESTS. Contractor shall not allow any officer or employee of the City to have any indirect or direct interest in this contract or the proceeds of this contract. Contractor warrants that no officer or employee of the City has any direct or indirect interest, whether contractual, non-contractual, financial or otherwise, in this contract or in the business of Contractor. If any such interest comes to the attention of Contractor at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City. Contractor also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. Contractor further warrants that no person having such an interest shall be employed in the performance of this contract. If City determines that a conflict exists and was not disclosed to the City, it may terminate the contract at will or for cause in accordance with paragraph 8.

In the event Contractor (or any of its officers, partners, principals, or employees acting with its authority) is convicted of a crime involving a public official arising out or in connection with the procurement of work to be done or payments to be made under this contract, City may terminate the contract at will or for cause in accordance with paragraph 8. Upon termination, Contractor shall refund to the City any profits realized under this contract, and Contractor shall be liable to the City for any costs incurred by the City in completing the work described in this contract. At the discretion of the City, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.

Contractor warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Contractor to any officer or employee of the City with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this contract. If City determines that such gratuities were or offered or given, it may terminate the contract at will or for cause in accordance with paragraph 8.

The rights and remedies of this section shall in no way be considered for be construed as a waiver of any other rights or remedies available to the City under this contract or at law.

28. THIRD PARTY INTERESTS AND LIABILITIES. The City and Contractor, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party, and this agreement is entered into for the exclusive benefit of the City and Contractor.

29. SURVIVAL OF RIGHTS AND OBLIGATIONS. The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.

30. SEVERABILITY. In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.

31. MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT. This contract constitutes the entire contract between the City and Contractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

32. CHOICE OF LAW AND VENUE. This contract shall be governed exclusively by the laws of the State of New Hampshire and any litigation shall be brought in a court located in the State of New Hampshire.

33. HUD Administrative Requirements

- A. Hatch Act - The Contractor agrees that no funds provided, nor personnel employed under this Contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.
- B. Lobbying - The Contractor hereby certifies that:
 - 1. No Federal appropriated funds it has received or will receive have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
 - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
 - 3. It will require that the following language of be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreement(s) and that all Contractor(s) shall certify and disclose accordingly as follows:

Lobbying Certification - This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. Religious Organization - The Contractor agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.2000).

**EXHIBIT B - SCOPE OF SERVICES
TO THE CONTRACT BETWEEN THE CITY OF NASHUA
AND
PROPOSER**

1. General Requirements

- 1.1 Inspections, testing and sampling shall comply with all applicable federal, state and local laws, rules, regulations and guidelines. Some of these include: OSHA 29 CFR 1926, Construction Industry Standards; 24 CFR Part 35, U.S. Department of Housing and Urban Development's Lead-Based Paint Poisoning Prevention in Certain Residential Structures; 40 CFR Part 745, Environmental Protection Agency's Lead Hazard Standards Rule; and the New Hampshire Code of Administrative Rules, Chapter He-P 1600. In situations where the regulations differ, whichever is the more stringent shall be followed.
- 1.2 **Trained and Certified Professionals**
All activities must be conducted by persons qualified and licensed to perform the activities according to applicable federal, state and local requirements.
- 1.3 **Laboratory Analysis**
All laboratory analysis must be performed by an EPA accredited laboratory
- 1.4 **Test Results**
Lead paint inspection and risk assessment reports must be provided to the LP & HH Program **electronically within five (5) business days following completion**. All test results must be provided to the property owner, in writing, within 15 days of completing the paint testing in accordance with 24 CFR, Part 35. A Statement regarding the property owner's responsibility of disclosure must be included in the report.
- 1.5 **Insurance**
- General Liability: \$1,000,000 per occurrence; \$2,000,000 aggregate
 - Automobile Liability: \$1,000,000 Combined single limit
 - Workers' Compensation as required by statute/Employer's Liability of \$100,000/\$500,000/\$1,000,000
 - Professional Liability: \$1,000,000 including occurrence based errors and omissions covering lead inspection and consulting activities

2. Evaluation & Clearance Requirements

- 2.1 Consistent with the terms of the request for proposals related to this contract, the City is executing contracts with two NH licensed Risk Assessor/Inspector. The LP & HH Program will alternate the assignment of qualified properties between the two contracts. The LP & HH Program will periodically review assignment of work to ensure equal and fair distribution of types of properties (i.e. single and multi-family properties).
- 2.2 The Risk Assessor/Inspector shall perform a combination lead-based paint inspection/risk assessment using an XRF analyzer, of all interior and exterior coated components and surfaces in compliance with all applicable local, state and federal rules and guidelines. The risk assessment shall include taking soil samples as required. If the soil is not accessible at the time of initial assessment, samples shall be taken at a later date at no additional cost to the LP & HH Program. Reports must be provided to the LP & HH Program **electronically within five (5) calendar days** of completion of on-site inspections. Next day analysis for dust wipes taken as part of risk assessment is not necessary, however results must be provided with the report.
- 2.2 The Risk Assessor/Inspector shall perform clearance examinations, following the completion of all required lead hazard reduction, in compliance with all applicable local, state and federal rules and guidelines. Clearance fees shall be separated between a first-time clearance and clearance after failures and include the cost to collect dust-wipe clearance samples. Lead Abatement contractors

will be instructed to prepare common areas for clearance at the time of a unit clearance to reduce the number of visits required by the Risk Assessor/Inspector. "Next Day" analysis is required for dust wipe samples taken at the first clearance visit.

2.3 Clearances – After Failure

Clearance inspections after a failed visual inspection or failed dust-wipe samples must be given priority and be performed within 24 hours of notification of such failure. "Same Day" analysis is required for dust wipe samples after a failed visual clearance and/or failed dust wipe samples. Provide copies of laboratory reports to LP & HH Program.

2.4 LP & HH Program staff must be notified of all inspections in order to attend.

2.5 A site visit fee may be billed with prior LP & HH Program approval for unusual circumstances. Examples include, but are not limited to, client failure to make property accessible, visual clearance of soil remediation, failure of contractor to prepare common areas for clearance at time of a unit clearance, etc. This fee shall not exceed 50% of the inspection/risk assessment or clearance fee, whichever is lower.

3. Compensation and Method of Payment

3.1 Basis for Payment

Payments made to the Risk Assessor/Inspector shall be supported by bills or invoices, which include the property address, the date and description of services. The invoices shall be signed and certified by the Risk Assessor/Inspection that the work performed has been undertaken and completed in accordance with the Scope of Services and terms of this Contract. Payments will be processed following completed services as approved by the LP & HH Program and made in accordance with the City's payment schedule. The City issues payments at least twice a month.

3.2 Compensation

Compensation shall be in accordance with the fees listed below:

Service Description	Unit	Fee
Combined Lead Paint Inspection & Risk Assessment	Per unit	
Risk Assessment Dust Wipe Samples / Soil Per Sample	Per sample	
Preliminary Clearance Inspection (to verify removal of components and/or surface coating)	Per unit	
Final Clearance Inspection (after completion of lead hazard reduction work)	Per unit	
"Next Day" dust wipes taken at Final Clearance Inspection	Per wipe	
Subsequent clearance Inspections following failure(s) (will be back-charged to contractor)	Per unit	
"Same Day" Dust Wipe Samples taken after a failure (will be back-charged to contractor)	Per sample	
Site fee for visits not listed above, i.e. unable to access property, soil clearance, etc (requires advance Program approval to be eligible for billing)	Per visit	